

DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-209844

DATE: January 24, 1983

MATTER OF: The Foley Company

DIGEST:

Agency did not abuse discretion in refusing to allow correction of amended bid where the amount of intended bid is not supported by clear and convincing evidence, calculation of bid is not fully explained and correction would place bid within 0.4 percent of next low bid.

The Foley Company seeks our review of a decision by the Department of the Navy which denied correction of its bid to repair a steam distribution system at the Naval Station, Adak, Alaska, under invitation for bids (IFB) N62474-81-B-8516. The Navy found that Foley's telegraphically amended \$852,800 bid was mistaken. However, it rejected Foley's request for a correction which would raise Foley's bid to \$1,182,000, placing Foley's bid within \$5,000 or 0.4 percent of the \$1,187,000 second low bid received. In the Navy's view, the amount of Foley's intended bid has not been adequately explained. We affirm the Navy's decision.

Although our Office has retained the right of review, the authority to correct mistakes alleged after bid opening but prior to award has been delegated to the procuring agency and the weight to be given the evidence in support of an alleged mistake is a question of fact to be considered by the administratively designated evaluator of evidence. This decision will not be disturbed by our Office unless it has no reasonable basis. Kings Point Mfg. Co., Inc., B-193952, September 14, 1979, 79-2 CPD 196.

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According to Foley, it inadvertently omitted a \$292,443 item for "General Construction" (plus profit and bonding costs on that item) in completing a Foley bid summary form on which its bid was based. It attributes the mistake to a miscommunication between an employee (who prepared the worksheets documenting general construction costs) and its chief estimator (who reviewed the estimates and prepared the bid). In preparing the bid, Foley states, the chief estimator overlooked the worksheets and, finding none, inquired as to whether the costs which Foley normally treats as general construction costs were included. The chief estimator says he meant to determine whether these costs were included in other items for which estimates had been furnished. The subordinate employee, thinking that the chief estimator was asking whether an estimate of general construction costs was included in the information furnished him, responded that it was. The chief estimator then excluded the item from the bid.

As stated, the Navy concluded that the evidence submitted, while adequate to show that a mistake had been made, was not sufficient to permit correction. It points out that one-half of the amount omitted is attributed by Foley to excavation which is a separate line item on the preprinted sheet Foley uses to compute the total bid price. The Navy was unable to fully trace Foley's costs from the data it submitted and in the circumstance believed it had to assume that at least a portion of the work which Foley claimed to have omitted was priced and considered by it in preparing its bid.

Moreover, the Navy viewed as applicable the rule stated in several of our prior decisions that whether evidence offered to support correction is clear and convincing depends in part on the difference which would remain between the bid as corrected and next low bids. The closer they are, we have said, the more difficult it is to clearly and convincingly demonstrate what the intended bid was. Broken Lance Enterprises, Inc., 56 Comp. Gen. 1 (1976), 76-2 CPD 314; Asphalt Construction, Inc., 55 Comp. Gen. 742 (1976), 76-1 CPD 82.

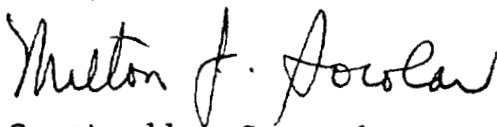
We believe the Navy acted reasonably in reaching its conclusion. It is not clear that the cost elements which Foley says were omitted were not considered by it. The bid summary prepared by the chief

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evaluator indicates that excavation costs were "included." Also, the record shows that the equipment cost of 8 months use of a backhoe was included in overhead. The worksheets used to prepare Foley's estimates of labor and material costs include entries for excavation which, when added together, equal the 4,245 cubic yards which Foley claims were left out.

In any event, the correction if allowed would bring its price to within 0.4 percent of the next low bid, a difference similar in magnitude to that involved in the Broken Lance decision. In this circumstance, and regardless of the good faith of the party involved, we believe a request for correction should be denied because there exists a reasonable basis for argument that the public confidence in the competitive bid system would be affected. See National Office Moving Co., B-196282, March 10, 1980, 80-1 CPD 185.

Since the Navy's conclusion was reasonable, its decision is affirmed.

for 
Comptroller General
of the United States